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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL L. ARENDT,
Plaintiff,

v.

SCOTT KERNAN,
Defendant.

Case No. [18-cv-00998-RS](#) (PR)

ORDER OF SERVICE;

**ORDER DIRECTING DEFENDANT
TO FILE A DISPOSITIVE MOTION
OR NOTICE REGARDING SUCH
MOTION;**

INSTRUCTIONS TO CLERK

INTRODUCTION

Plaintiff alleges in this 42 U.S.C. § 1983 suit that his jailors and the Governor have violated his due process rights by failing to adhere to the terms of the law created by Proposition 57. When liberally construed, plaintiff has stated claims for relief against defendant Kernan only.

Defendant is directed to file a dispositive motion or notice regarding such motion relative to the claims raised in the complaint or before **August 27, 2018**. The Court further directs defendant to adhere to the notice provisions detailed in Sections 2.a and 10 of the conclusion of this order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, a court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1), (2). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims

Plaintiff alleges that (i) the Governor; (ii) Scott Kernan, the Secretary of the California Department of Corrections and Rehabilitation (“CDCR”); and (iii) the CDCR have violated his due process rights by failing to properly implement the provisions of Proposition 57. When liberally construed, plaintiff has stated a due process claim against Kernan, who issued the regulations that allegedly resulted in the mismatch between

1 plaintiff's parole consideration date and his earliest possible release date.

2 His claims against Governor Brown are DISMISSED. He alleges Brown
3 committed fraud, oppression, and false advertisement in his public statements about the
4 implementation of Proposition 57. Whatever the merits of these claims, they are state law
5 claims, which are not actionable under section 1983. Furthermore, plaintiff fails to allege
6 facts connecting Brown to the implementation of regulations that resulted in an alleged due
7 process violation. Plaintiff's claims against the CDCR are DISMISSED as duplicative of
8 his claims against its Secretary, defendant Kernan.

9 **CONCLUSION**

10 For the foregoing reasons, the Court orders as follows:

11 1. The Clerk of the Court shall issue summons and the United States Marshal
12 shall serve, without prepayment of fees, a copy of the operative complaint in this matter
13 (Dkt. No. 1), all attachments thereto, and a copy of this order upon Scott Kernan at the
14 CDCR. The Clerk shall also mail courtesy copies of the complaint and this order to the
15 California Attorney General's Office.

16 2. On or before **August 27, 2018**, defendant shall file a motion for summary
17 judgment or other dispositive motion with respect to the claim(s) in the complaint found to
18 be cognizable above.

19 a. If defendant elects to file a motion to dismiss on the grounds plaintiff
20 failed to exhaust his available administrative remedies as required by 42 U.S.C.
21 § 1997e(a), defendant shall do so in a motion for summary judgment, as required by
22 *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014).

23 b. Any motion for summary judgment shall be supported by adequate
24 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
25 Civil Procedure. Defendant is advised that summary judgment cannot be granted, nor
26 qualified immunity found, if material facts are in dispute. If any defendant is of the
27 opinion that this case cannot be resolved by summary judgment, he shall so inform the
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1 Court prior to the date the summary judgment motion is due.

2 3. Plaintiff's opposition to the dispositive motion shall be filed with the Court
3 and served on defendant no later than forty-five (45) days from the date defendant's
4 motion is filed.

5 4. Defendant shall file a reply brief no later than fifteen (15) days after
6 plaintiff's opposition is filed.

7 5. The motion shall be deemed submitted as of the date the reply brief is due.
8 No hearing will be held on the motion unless the Court so orders at a later date.

9 6. All communications by the plaintiff with the Court must be served on
10 defendant, or defendant's counsel once counsel has been designated, by mailing a true
11 copy of the document to defendant or defendant's counsel.

12 7. Discovery may be taken in accordance with the Federal Rules of Civil
13 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local
14 Rule 16-1 is required before the parties may conduct discovery.

15 8. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the
16 Court informed of any change of address and must comply with the Court's orders in a
17 timely fashion. Failure to do so may result in the dismissal of this action for failure to
18 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

19 9. Extensions of time must be filed no later than the deadline sought to be
20 extended and must be accompanied by a showing of good cause.

21 10. A decision from the Ninth Circuit requires that pro se prisoner-plaintiffs be
22 given "notice of what is required of them in order to oppose" summary judgment motions
23 at the time of filing of the motions, rather than when the court orders service of process or
24 otherwise before the motions are filed. *Woods v. Carey*, 684 F.3d 934, 939-41 (9th Cir.
25 2012). Defendant shall provide the following notice to plaintiff when he files and serves
26 any motion for summary judgment:
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1 The defendants have made a motion for summary judgment by which they
2 seek to have your case dismissed. A motion for summary judgment under
3 Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your
4 case.


5 Rule 56 tells you what you must do in order to oppose a motion for summary
6 judgment. Generally, summary judgment must be granted when there is no
7 genuine issue of material fact — that is, if there is no real dispute about any
8 fact that would affect the result of your case, the party who asked for
9 summary judgment is entitled to judgment as a matter of law, which will end
10 your case. When a party you are suing makes a motion for summary
11 judgment that is properly supported by declarations (or other sworn
12 testimony), you cannot simply rely on what your complaint says. Instead,
13 you must set out specific facts in declarations, depositions, answers to
14 interrogatories, or authenticated documents, as provided in Rule 56(e), that
15 contradict the facts shown in the defendants' declarations and documents and
16 show that there is a genuine issue of material fact for trial. If you do not
17 submit your own evidence in opposition, summary judgment, if appropriate,
18 may be entered against you. If summary judgment is granted, your case will
19 be dismissed and there will be no trial.

20 *Rand v. Rowland*, 154 F.3d 952, 962-963 (9th Cir. 1998).

21 11. Governor Brown and the CDCR are TERMINATED as defendants in this
22 action, and the claims against them are DISMISSED.

23 **IT IS SO ORDERED.**

24 **Dated:** May 22, 2018

25 
26 RICHARD SEEBORG
27 United States District Judge
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